

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

RICHARD and OLGA STERBA,

No. 13-10245

Debtor(s).

OLGA STERBA.

Plaintiff(s).

V

A.P. No. 14-1111

K & M LAW, et al.,

Defendant(s).

Memorandum re Abstention

In this adversary proceeding, Chapter 7 debtor and plaintiff Olga Sterba seeks damages against a law firm and its members and employees arising out of their advice to her to file a bankruptcy petition. The first claim is that defendants are liable to her pursuant to § 110 of the Bankruptcy Code as petition preparers. The other four claims are for malpractice, breach of contract and breach of fiduciary duty under state law. Defendants have made timely jury demands. For the reason stated below, the court will abstain from hearing the state law claims pursuant to 28 U.S.C. § 1334(c)(1).

First, the only federal claim is extremely tenuous. The complaint fails to identify any document any defendant prepared for filing. There can be no liability under § 110(e)(2)(A) unless the defendant is a petition preparer as defined in § 110(a)(1). The latter requires preparation of a document for filing. Without such a document, there is no petition preparer and no federal claim. Moreover, an attorney for the debtor or the employee of such an attorney cannot be a petition preparer. The court anticipates an appropriate motion from defendants based on these grounds.

Second, since the defendants have a right to a jury trial the matter will have to be tried in the United States District Court. There is no reason to burden that court with a garden-variety malpractice action which does not have an impact on the Sterba's rights as a debtor and is not necessary to any pending bankruptcy matters. The state court is the proper forum.

For the foregoing reasons, the court will sever claims 2, 3, 4 and 5 and dismiss them without prejudice.

Dated: November 21, 2014

~~Alan Jaroslovsky
Chief Bankruptcy Judge~~